



DECISION RECORD  
FINDINGS OF NO SIGNIFICANT IMPACT – FONSI (40 CFR 1508.13)  
PINE TREE WIND DEVELOPMENT PROJECT

INTRODUCTION

Finding of No Significant Impact  
Pine Tree Wind Development Project  
NEPA Compliance Document Number CA-650-2005-13

**Introduction**

The City of Los Angeles Department of Water and Power (LADWP), is proposing to construct 80, 1.5-megawatt (MW), wind turbine generators, several meteorological towers, an electrical collection system, a substation, a transmission line and switching station to connect with the regional electrical grid, an operations and maintenance (O&M) building, and access roads in and near Jawbone and Pine Tree Canyons, Kern County, California. In order to accomplish this, LADWP must construct 1.1 miles of transmission lines on BLM lands within Pine Tree Canyon, and utilize the Jawbone Canyon Road, of which, 4.7 miles cross BLM administered lands to access private property where the generators will be located.

The Ridgecrest Field Office of the Bureau of Land Management (BLM) is proposing to issue Los Angeles Department of Water and Power two right-of-way grants. One grant will authorize the installation, and long-term operation and maintenance of the proposed project transmission line which crosses approximately 1.1 miles of BLM administered land along Pine Tree Canyon road. The second grant will authorize access to the project property for both construction activities and long-term project operations and maintenance. This use of approximately 4.7 miles of BLM administered land in Jawbone Canyon would utilize the existing road.

Guiding the determination of the type of environmental documentation to prepare is the consideration of the extent of impact the project would have on resources under state or federal jurisdiction. LADWP, as CEQA lead agency, determined that the impacts of the project were sufficient to trigger an EIR under the impact thresholds typically applied to CEQA evaluations. The BLM determined that the project entails a relatively minor involvement of federal lands (i.e., the proposed project's access on existing roads crossing 4.7 miles of the BLM-administered land and transmission line crossing 1.1 miles of BLM land). Thus, BLM directed that a NEPA EA would be prepared to evaluate potential environmental impacts from the proposed action relative to areas of BLM jurisdiction. LADWP, as the CEQA lead agency, and BLM, as the NEPA lead agency, cooperated to prepare one environmental document for the proposed project and action that satisfies both acts. Accordingly, the Pine Tree Wind Development Project Environmental Assessment (BLM#CA-650-2005-13) / Final Environmental Impact Report (SCH#2004041076) is prepared to address the environmental effects of the proposed action, evaluate alternatives, and propose mitigation measures for significant impacts associated with construction and operation of 80 wind turbines and appurtenant facilities at the project site.

**Discussion**

The effects of the Proposed Action and Alternatives were evaluated in the Draft EIR/EA with respect to their impacts in the following issue areas: geology and soils, hydrology and drainage, air quality, biological resources, land use, transportation, cultural resources, visual resources, and socioeconomics. Impacts and mitigation measures have been clarified based upon public review and comment and are summarized below. Based on the project's use of a small amount of federal lands to support the project during the construction period and the incidental use of these lands for site access during the operation period, BLM concludes that the Proposed Action would result in no significant impacts to the quality of the human environment. Mitigation measures are proposed for various issues and are detailed in the EA/FEIR.

The foregoing EA, CA-650-2004-40, identified the following issues:



## Geology and Soils

The project site is situated in the southern section of the Sierra Nevada Geomorphic Province and is characterized by deeply incised valleys, steep hillsides, and mountains that lie on the eastern side of the Pacific Crest line descending towards the Mojave Desert. The project site is in a seismically active area and several major active faults are located in the region, including the Garlock Fault lying east of Barren Ridge. Construction of the proposed project could expose people and structures to various geotechnical hazards, including strong ground shaking, liquefaction hazards in the major canyons (Pine Tree and Jawbone Canyons), and slope stability hazards from grading of areas in excess of 2:1 slope. Measures to mitigate these geotechnical hazards are provided that include geotechnical design and construction evaluations conducted by a registered geotechnical engineer and review of final design by Kern County Engineering Department. Grading could result in potentially significant impacts including blasting to assist excavation, as well as erosion and sedimentation from disturbance of soils. Erosion of disturbed soils could also occur from storm water runoff. A blasting plan will be prepared to govern blasting so that potential effects from fly rock are eliminated. Extensive measures to control erosion and sedimentation have been developed that include a range of design measures, structural measures, and prohibitions to be implemented during construction. In addition, a Storm Water Pollution Prevention Plan integrating Best Management Practices from Kern County grading regulations, BLM standard practice, and FHWA FLP 94-005 erosion control design manual will be prepared and implemented. BLM standard practices will be implemented throughout the site including noxious weed control, use weed-free seed mixes for revegetation, control of yellow starthistle, and separation of topsoil.

## Hydrology and Groundwater

The proposed project lies within two major watershed areas, Jawbone Canyon and Pine Tree Canyon. Both Jawbone and Pine Tree canyons drain into the Fremont Valley, to the east of the project property. Drainage waters collected in the watershed flow in surface water and stream channels and eventually permeate into the coarse permeable soils of the channels and flow subsurface to aquifers in the valley. The proposed project has the potential to alter runoff volumes through clearing and grading for project components and by access road construction at stream channel crossings. There are approximately 85 locations where access roads cross existing drainages requiring some form of crossing improvement. The crossing designs have been developed to minimize physical disturbance and to protect downstream areas from erosion and turbidity, and the aforementioned erosion and sedimentation controls will prevent significant impacts from this source. Possible accidental fuel or lubricant leaks could adversely affect water quality; however, the SWPPP contains measures to protect water quality from such accidents. Both Pine Tree and Jawbone Canyons in the areas of BLM managed lands are designated FEMA 100-year flood plains. No new structures will be constructed within these areas.

## Air Quality

The project site is located within the Mojave Desert Air Basin, which is under the jurisdiction of the Kern County Air Pollution Control District (KCAPCD). The project site is within an area that is in attainment for all federal criteria pollutants except ozone ( $O_3$ ). On April 15, 2004, the U.S. Environmental Protection Agency (EPA) issued the initial designations for the 8-hour  $O_3$  standard, and Eastern Kern County is classified as "basic nonattainment." Relative to state standards, Kern County has been classified as a nonattainment area for the state 1-hour  $O_3$  and  $PM_{10}$  (particulate matter equal to or less than 10 microns in size) standards (CARB 2004).

The general conformity analysis shows that project emissions do not exceed *de minimus* levels for reactive organic compounds (ROC) and nitrogen oxides ( $NO_x$ ), and are less than 10 percent of the areas annual emissions budget. Therefore, the proposed project is presumed to conform to the State Implementation Plan. Construction of the proposed project requires the use of construction equipment that temporarily contributes to air pollution in the air basin in the form of  $NO_x$ , ROC, and particulate matter ( $PM_{10}$ ). Mitigation requirements include use of exhaust catalysts on 10 percent of the construction equipment, aqueous fuel when commercially available in the project area, and implementation of a dust control plan to limit  $PM_{10}$ .

## Vegetation and Habitat

Thirty-two vegetation communities and cover types were identified within the project area during general surveys including five vegetation communities considered to be of high priority for inventory in the CNDDB, including Mojave desert wash scrub, Mojave riparian forest, southern riparian scrub, native perennial grassland, and Joshua tree woodland. In addition, the California Desert Conservation Area (CDCA) Plan identifies Unique Plant Assemblages (UPAs) for emphasis in the environmental review process and for special



monitoring attention. All riparian systems in the CDCA are classified as UPA. On the project site, this would include all Mohave riparian forest, Mojave desert wash scrub, and southern riparian scrub vegetation communities. No federally listed plant species were found in the project footprint during two seasons of surveys. Mitigation for potential removal of up to 150 Joshua trees, a BLM sensitive species, is provided that includes avoidance, salvage, or replacement of habitat at an approved ratio. The mitigation plan also includes restoration of temporary habitat impacts associated disturbance of the UPA habitats as well as other habitats considered sensitive on the state level.

## **Wildlife Resources**

Due to the large size of the project study area, the diverse assortment of vegetation communities, the variation in topographic relief, and the fact that the habitat is primarily undeveloped, a diverse array of wildlife species occur in the area. Informal consultation with the U.S. Fish and Wildlife Service (Service) identified several species that could inhabit the project area, including desert tortoise, California condor, Southwestern willow flycatcher, yellow-billed cuckoo, least Bell's vireo, and mountain plover. Subsequent field surveys and habitat assessments have confirmed that the desert tortoise inhabits portions of the site between the Barren Ridge and SR-14. However, the other species were not detected and because of lack of suitable habitat, are not expected to occur. A series of measures designed to mitigate potential impacts to desert tortoise are provided in the EA, including restoring habitat (temporarily disturbed) and monitoring during construction. Monitoring would include contractor education, pre-construction surveys, relocation under direction of a pre-approved tortoise biologist, speed limits in tortoise areas, and warning signs. Mitigation measures are also provided for sensitive species such as Mojave ground squirrel that are listed by the State of California.

Direct impacts to sensitive raptors, passerine birds, and bats could result from collisions with rotating turbine blades. The project avian risk assessment predicted the potential raptor mortality of the project to be 0.047 raptors per turbine per year (less than four raptor fatalities per year for the project), a level that would not significantly affect the local raptor population, in particular, red-tailed hawk populations. No raptor nests were found on-site. While this does not preclude the possibility of other raptors colliding with wind turbines, the avian risk assessment identified red-tailed hawks as the most likely raptor to be killed due to a collision.

The avian risk analysis and project habitat analyses conducted over the past two years lead to the conclusion that the project site (where turbines would be located) lacks substantial activity by either songbirds or bats. Based on the habitat assessment and consideration of mortality rates from other Western wind developments, it is estimated that passerine mortality would be approximately 0 to 2 birds per turbine per year. This level of mortality includes potential effects on migrants and would not be considered a significant impact in relation to the total population of the various bird species found in the area or migrating through.

Relative to bats, operation of the proposed project would result in some bat mortality from collisions with wind turbines. Given the low habitat value for bats, determined from site surveys, and the typical rates of mortality experienced at other Western operating sites, it is estimated that bat mortality would be approximately 0 to 2 bats per turbine per year. This level of mortality includes potential effects on migrants and would not be considered a significant impact in relation to the total population of the various bat species, which are numerically very large.

Relative to migrating songbirds and bats, the numbers of fatalities for individual species from the many fatality studies conducted in the West suggest that the mortality levels from this cause are inconsequential to the affected species.

Though bird mortality associated with migratory species is an unintended or incidental occurrence not likely to be considered a take under these laws, the mortality is nonetheless considered an adverse impact. The proposed project includes several measures to reduce potential for mortality including monitoring of the rate of avian and bat mortality after the start of operations for a period of at least one year to ensure that the predicted rates are accurate, shutting down temporarily or seasonally a turbine that is responsible for an unusual kill of birds, designing lighting systems so as not to attract birds, and using transmission tower design to avoid against electrocution hazard.

## **Land Use and Recreation**

The project site is essentially undeveloped, but a portion of it is currently and has historically been used as grazing land for cattle and is under federal grazing allotment. The project site is not designated as Farmland by the California Department of Conservation; therefore, the project would not convert Farmland to non-



agricultural use. Experience in the Tehachapi WRA and other WRAs shows that cattle grazing is compatible with wind power and that cattle and sheep quickly acclimate to wind turbine operation. However, existing cattle guards shall be maintained and new cattle guards provided if none exist at entry gates on Jawbone Canyon Road to prevent livestock from entering the Jawbone Canyon Open Area.

The federal lands affected by the proposed project include land in Pine Tree and Jawbone Canyons. Approximately 1.1 mile of the BLM-administered land along Pine Tree Canyon Road would be crossed for the proposed project transmission line and 4.7 miles of BLM-administered land in Jawbone Canyon would be crossed. In Jawbone Canyon, the right-of-way would involve a total of approximately 2.2 miles in three separate parcels within the Jawbone Canyon Open Area, which has been designated as Class I (Intensive Use) in the CDCA Plan. The use of Jawbone Canyon Road in the Open Area for the proposed project would generally be consistent with Class I management objectives and the CDCA. During project construction, conflicts may arise in relation to project-related traffic and OHV use in the Open Area and measures in the form of a transportation plan to be approved by BLM prior to construction will be implemented to alleviate potential conflicts.

The project site, including the transmission line corridor, is located within the Joint Service Restricted R-2508 airspace complex. LADWP consulted with both Naval Air Systems Command Weapons Division and Edwards Air Force Base, and has developed a configuration of wind turbines that resolves the potential for interference with the military training routes. The military has reviewed the site plan and found that the plan as currently proposed would avoid potentially significant impacts on the military training routes. Any changes in project configuration would need to be reviewed by the military.

## **Transportation**

Primary access to the proposed project (wind turbine and related components) would be taken from Jawbone Canyon Road at SR-14. While traffic volumes on Jawbone Canyon Road are generally very low, public recreational use of the Jawbone Canyon Open Area increases considerably on holiday weekends between Thanksgiving and Memorial Day. To minimize potential conflicts between recreation users and project truck and worker traffic, a draft transportation safety plan has been prepared with the objective of eliminating or substantially reducing the potential conflicts between the construction traffic and recreation users in the Open Area. The plan will be finalized in coordination with the Kern County Roads Department and the BLM (including, as appropriate, Steering Committee representatives) as part of the County road construction and use permitting process. The plan will provide rules, physical controls, and enforcement provisions for construction traffic to minimize conflicts, including establishing time periods (related to the high recreation use periods of the Open Area) during which no construction traffic, except minimal travel related to critical site security and safety activities, will be allowed on Jawbone Canyon Road. LADWP will provide funding to support an additional staff member at the Jawbone Visitors Center and an additional ranger position during the project construction period to mitigate the impact to the Center staff and ranger oversight caused by project construction related traffic. These positions would be funded subject to a Memorandum of Agreement between LADWP and BLM. Additionally, LADWP and/or the construction contractor will repair any damage to the County road through Jawbone Canyon caused by use by heavy trucks.

## **Cultural Resources**

The cultural resources inventory and records search conducted for the project area resulted in the identification of 101 archaeological sites, including 43 previously recorded and 58 newly identified properties. Native American consultation was completed consistent with Section 106 of the National Historic Preservation Act. Of the total sites discovered, 20 have the potential to be affected by project construction activities and 7 of these are considered National Register of Historic Places-eligible properties. The other 13 sites do not qualify due to lack of integrity and/or lack of research potential. Mitigation for the seven identified sites affected by project construction involves implementing a data recovery program that includes further investigations at each of the seven sites as recommended in a Historic Properties Treatment Plan. The treatment strategy developed for the data recovery program incorporates a flexible program of surface reconnaissance, surface collection, surface transect units, controlled excavation, and laboratory studies to ensure the recovery of sufficient data before the site is affected by project activities. It also includes a discovery plan that addresses actions to be taken in the event of the discovery of human remains, including provisions for contacting the Native American Heritage Commission and appropriate Tribes.



## Visual Resources

Terrain within the proposed project site ranges from rolling hills to moderately steep ridges with elevations ranging from approximately 3,000 feet above MSL in the northeastern corner of the project property to approximately 5,000 feet above MSL in the southwestern corner of the property. The property surrounding the project site is largely undeveloped with the exception of the Sky River Ranch wind development, located on the Sweet Ridge ridgeline about 1 to 2 miles west of the project property, and consisting of 342 approximately 100- to 150-foot-tall turbines sited along an approximate 6-mile length of the ridgeline. Potentially sensitive viewpoints within the area surrounding the proposed project include SR-14 as it passes to the east of the project site; the Jawbone Canyon Open Area, located northeast of the project site; and the Pacific Crest Trail as it passes to the west of the project site. Visual simulations of the proposed project demonstrate that the proposed wind turbines would be visible from the Pacific Crest Trail and Jawbone Canyon Open Area, but that the views from these locations are in middle ground to background distance zones, 2.5 to 5.5 miles to turbines from the Pacific Crest Trail and 5 to 6 miles to turbines from the western end of the Jawbone Open Area. Based on distance from the viewer, intervening terrain, and limited intermittent nature of the view, the visual impact is considered less than significant. Also, the Pacific Crest Trail passes through the Sky River Ranch wind development in this vicinity.

Relative to SR-14, the upper rotor sweep of five or fewer turbines would be visible from SR-14 at a distance of over 6.5 miles near Pine Tree Canyon. However, the turbines would be visible for only a matter of several seconds at highway speed. In addition, the transmission line and switching station would be visible from SR-14 at a middle ground distance of 1.7 to 2.7 miles near the mouth of Pine Tree Canyon. At these distances, and with the mountains backdrop, and because the towers are to be made on non-reflective materials, the level of change to the visual environment of the BLM property as seen from the highway would be minor and therefore, less than significant.

## Socioeconomics

The areas surrounding the project site are predominantly sparsely populated, unincorporated areas of Kern County, with concentrations of population in several smaller cities and communities. The study area generally remained below county average in percent of population living at or below poverty levels, and recent unemployment levels within Tehachapi, California City, and Mojave remained below that of Kern County as a whole. The project would directly generate short-term income growth through the payment of wages and salaries during construction. Over the long-term, there would be some positive economic activity associated with increased tax base and wages for 10 to 12 permanent workers. A short-term increase in the demand for housing in the County could occur as a result of construction workers seeking lodging during the construction period. However, LADWP has agreements with a number of motels to temporarily house workers associated with its operations in the Mojave and Owens Valley areas.

## Environmental Justice

Although there are low-income populations present within the study area, there is no indication that either the construction or operation of the proposed project would negatively impact a low-income population component to any greater degree than the general population of the surrounding area or region. As such, disproportionately high and adverse human health or environmental impacts on low-income populations are not expected, and no Environmental Justice impacts would occur.

Relative to potential sources of environmental health and safety risks to children resulting from the proposed project, there are no children inhabiting the project site. Though children do frequent the Jawbone Canyon OHV area, they are visitors and would not be subject to long-term or periodic exposure to hazardous materials, air pollutants, and noise. It is concluded that there are no disproportionate risks to the health and safety of children involved with construction or operation of the proposed project.

## SUMMARY

The proposed project, with all mitigation measures in place, will not result in significant adverse impacts on geology and soils, hydrology and water quality, air quality, biological resources, land use and recreation, transportation, cultural resources, visual resources, and socioeconomics. The project will provide a public benefit by allowing the City of Los Angeles to increase the share of its electrical generation capacity derived from clean and renewable energy sources.



BLM, in its capacity as NEPA lead agency responsible for management of federal lands, has determined that project-related right-of-way grants for the use of federal land can be issued in accordance with relevant federal laws, regulations, and policies (including Title V of the Federal Land Policy and Management Act [FLPMA] of 1976 and Title 43 CFR 2800, et seq.). Specific to wind power, the proposed project implements an important strategy in the President's National Energy Policy, that is, to encourage the development of renewable energy resources. Accordingly, BLM's Interim Wind Energy Development Policy (IM2003-020) stipulates that rights-of-way should be managed to encourage the development of wind energy in acceptable areas while minimizing impacts to natural, cultural, and visual resources on the public lands. The proposed project's use of federal lands is for access only and has demonstrated that there will be minimal impact to natural, cultural, and visual resources on public lands.

#### **Finding of No Significant Impact:**

The Ridgecrest Field Office of the Bureau of Land Management interdisciplinary review and analysis determined that the proposed action would not trigger significant impacts on the environment based on criteria established by regulations, policy and analysis.

I have reviewed the above mentioned NEPA compliance document (EA). I have determined that the proposed action and the alternatives are in conformance with the CDCA PLAN, dated Sept. 1980.

I have determined, based on the analysis in **CA-650-2005-13** that this is not an action that would significantly affect the quality of the human environment; therefore, an Environmental Impact Statement is not required. This determination is based on the rationale that significance criteria, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27) are not being met, or if met will be mitigated to a level that will not be significant. Title 40 CFR 1500.5 (l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Title 40 CFR 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

The following rationale was used to determine that significant impacts were not present for each criteria mentioned in Title 40 CFR 1508.27:

#### **Rationale for Less than Significant Impact Determination**

##### **1. Beneficial and adverse impacts.**

Beneficial and adverse impacts associated with all of the alternatives are clearly disclosed in the Environmental Assessment.

##### **2. The degree to which the proposed action and alternatives affect public health or safety.**

Significant effects to public health and safety are not anticipated to result from implementation of the proposed action.

##### **3. Unique characteristics of the geographic area.**

While the proposed project is in close proximity to resources considered to be unique (i.e., wetlands, cultural/heritage resources), this in and of itself does not require the preparation of an Environmental Impact Statement. The critical factor here is whether the proposed action has a significant impact of these unique characteristics. Based on the analysis present in the Environmental Assessment, I do not believe that proposed action significantly affects these characteristics, in addition, the impacts from implementation of the proposed action are local; they are not national or regional in nature.

##### **4. The degree to which the effects on the human environment are likely to be highly controversial.**

The nature of potential effects on the human environment from the proposed action is well established and not likely to be highly controversial. While the public may perceive the issue to be controversial, there is no known scientific controversy over the impacts of the decision.

##### **5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

The effects on the human environment from the proposed action are not uncertain and do not involve unique or unknown risks. All proposed actions are standard practices that have been previously implemented with known cause and effect relationships.

**6. The degree to which the action or alternatives may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.**

The proposed action is consistent with adjacent uses for the project area and will not establish a precedent for the future nor does it represent a decision in principle about a future consideration.

**7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.**

The proposed action is not related to other past, present or reasonably foreseeable actions likely to result in any significant impacts. Cumulative impacts relative to the issues are discussed Sections 3.1-3.8.

**8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historical resources.**

The ground disturbing activities associated with proposed action will not directly adversely affect any sites eligible for the National Register of Historic Places. Indirect effects to sites eligible for the National Register are documented in the EA and will be mitigated in a mitigation plan subject to the approval of the California State Historic Preservation Office.

**9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.**

The biological evaluation prepared for this environmental assessment determined that project will not adversely affect any sensitive, threatened, endangered or proposed for listing species. A biological evaluation of this project is available for review in the Pine Tree Wind Development project file and has been incorporated by reference.

**10. Whether the action threatens a violation of Federal, State, or local law or other requirements imposed for the protection of the environment.**

The action will not violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws, regulations and policies were considered in the EA. The proposed action does not set a precedent for other projects that may be implemented to meet the goals and objectives of the CDCA Plan.

**Based on these factors, the BLM does not believe significant impacts would occur and therefore, an EIS is not required.**

The proposed action if implemented with the environmental protection measures outlined in CA-650-2005-13 would not result in a significant impact to the environment.

 Jan. 24, 2006

Hector A. Villalobos  
Field Manager

Date

#### **Mitigation Measures**

The United States Fish and Wildlife Service (Service) believes that the following reasonable and prudent measures are necessary and appropriate to minimize take of the desert tortoise and are intended to clarify or supplement the avoidance and minimization measures that have been proposed by the BLM as part of the proposed action.

1. The BLM must ensure that additional well-defined operational procedures are implemented to reduce injury and mortality of desert tortoises during the proposed project.
2. The BLM must suspend the ROW grant if the avoidance and minimization measures for the desert tortoise are not fully implemented.
3. The BLM must ensure that the avoidance and minimization measures identified in the project description are effective in avoiding injury and mortality of desert tortoise.
4. The BLM must require the LADWP to take steps to control non-native plant species that become establish because of their activities in the ROW.

The Service's evaluation of the effects of the proposed action includes consideration of the measures developed by the BLM and repeated in the "Description of the Proposed Action" portion of the biological opinion (Biological Opinion for



the Pine Tree Wind Development Project 6840(P) CA-650.25 1-8-05-F-37) to reduce the adverse effects of the proposed project on the desert tortoise. Any subsequent changes in the avoidance and minimization measures proposed by the BLM may constitute a modification of the proposed action and may warrant re-initiation of formal consultation, as specified at 50 Code of Federal Regulations 402.16. These reasonable and prudent measures are intended to clarify or supplement the avoidance and minimization measures that were proposed by the BLM as part of the proposed action.

To be exempt from the prohibitions of Section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et. Seq.) (Act) the BLM must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

The following terms and conditions implement reasonable and prudent measure 1:

1. The BLM must submit Desert Tortoise Monitor/Biologist Qualifications Statements (Statements) for each proposed monitor authorized biologist to the Service for their review and approval at least 30 days prior to the initiation of any activity within desert tortoise habitat. The BLM must review the Statements prior to their transmittal to the Service to ensure that each individual meets the minimum qualifications for completing the duties they will be responsible for. Alternatively, the BLM must provide the names of the authorized biologists that have been approved within the last year by the Service and that will be assigned to the Project.
2. An authorized biologist must be present when ground disturbing activities occur in habitat that may be occupied by the desert tortoise (e.g. during the use of mechanized equipment off established roads), and when flood-damaged roads are repaired. Work will not proceed unless the authorized biologist is present.
3. After the construction phase of the proposed project is complete, project-related staff must not drive motorized vehicles off of established roads in desert tortoise habitat unless such activity is necessary to repair damaged towers or an electrical transmission line.
4. If a desert tortoise is observed within a staging or construction area, the desert tortoise may be collected and moved to an adjacent area. If the ambient air temperature when a desert tortoise is captured exceeds 95 degrees, the animal must be kept shaded in an environment that does not exceed 95 degrees, and not be released until the ambient air temperature declines below 95 degrees. If an authorized biologist determines that a desert tortoise will not be moved from a staging or construction area, the desert tortoise must be kept under observation during the day the construction activity is conducted.
5. In the event that a desert tortoise is moved, it must be monitored for the remainder of the day after it is moved to determine if the animal exhibits signs of returning to the area from which it was gathered, or shows signs of stress, e.g., gaping or foaming at the mouth, or atypical behavior.
6. Pre-construction surveys that are conducted to detect desert tortoises in areas where ground-disturbing activities will occur must utilize the 100 percent-absence survey described in the Service's 1992 desert tortoise survey protocol.
7. All handling of desert tortoises must be conducted in accordance with the most recent protocols described by the Desert Tortoise Council.
8. If storm damage on the Jawbone or Pine Tree Access Roads results in more than 1.79 acres of disturbance, the BLM must contact the Service to determine if reinitiation of consultation is required before the storm damage is repaired.
9. The permanent fence that is installed around the switching station must be buried to a depth of 12 inches to prevent desert tortoises from entering the confines of the switching station.
10. Temporary desert tortoise exclusion fence must be installed around the perimeter of the temporary staging area in the Pine Tree Canyon area to reduce the potential that desert tortoises are affected by construction activities.

The following term and condition implements reasonable and prudent measure 2:

1. If the LADWP does not implement all of the BLM's avoidance and minimization measures and the terms and conditions of the biological opinion on federal and nonfederal lands, the BLM must suspend the ROW grant until all these items are fully implemented.

The following terms and conditions implement reasonable and prudent measure 3:

1. The BLM must contact the Service if a desert tortoise is injured or killed during the implementation of project activities. The Service and BLM will discuss the circumstances of the injury or mortality and the effectiveness of the avoidance and minimization measures with the BLM to determine if any improvements or modifications need to be made. Project activities may continue during this review period, if all avoidance and minimization



measures proposed by the BLM and LADWP and the terms and conditions of the biological opinion have been and continued to be implemented.

2. The BLM must contact the Service 10 years after the construction of the project component is complete to discuss changes in the status of listed species that may occur in the project area, the environmental baseline within the action area, or improvements that have been developed during the time period with regards to desert tortoise avoidance and minimization measures. Through these discussions the Service may determine that reinitiation of consultation is necessary. The BLM is still bound, however, by the requirements for reinitiation that are discussed in the "Reinitiation Notice" section of the biological opinion.

The following terms and conditions implement reasonable and prudent measure 4:

1. The BLM must ensure that the LADWP monitors the ROW for non-native plant species on or adjacent to the Pine Tree Access Road. The location and size of the areas affected by such species will be reported the Service along with the annual reports required in the "Reporting Requirements" section of the biological opinion.
2. The BLM must ensure that the LADWP takes steps to eliminate or control non-native plant species that occur on or adjacent to the Pine Tree Access Road and that arise because of the project-related activities.

## **APPEALS**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1.

If an appeal is taken, your Notice of Appeal must be filed in this office (at the above address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993 or 43 CFR 2804.1) for a Stay of this decision during the time that your appeal is being reviewed by the Board, the Petition for Stay must accompany your Notice of Appeal. A Petition for Stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for Stay must also be submitted to each party named in this decision, to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a Stay, you have the burden of proof to demonstrate that a Stay would be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law and other pertinent regulations, a Petition for a Stay of decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the Stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of the immediate and irreparable harm if the Stay is not granted; and
4. Whether the public interest favors granting a Stay.

Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:30 am – 4:00 pm), Monday-Friday, except holidays, and maybe published as part of this environmental assessment. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public review in their entirety.